

ASSEMBLY BILL

No. 2707

Introduced by Assembly Member Perata
(Coauthor: Senator Polanco)

February 23, 1998

An act to amend Sections 3060 and 3062 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2707, as introduced, Perata. Vehicles: New Motor Vehicle Board: franchises.

(1) Under existing law, motor vehicle dealer franchisors are prohibited from terminating, or refusing to continue, any existing franchise unless specified requirements are met, including the requirement that a written notice be sent to franchise motor vehicle dealers concerning their rights to file certain protests with the New Motor Vehicle Board, as specified.

This bill would require additional information to be included in that notification.

(2) Under existing law, if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same line-make of vehicle is then represented, or seeks to relocate an existing motor vehicle dealership, the franchisor is required to notify, in writing, the board and each franchisee in that line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership within or into that market area.

This bill would require that written notification to each franchisee contain specified information concerning the franchisee's right to protest the action to the board.

(3) Because a violation of the above provisions would be a crime, the bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3060 of the Vehicle Code is
2 amended to read:

3 3060. Notwithstanding Section 20999.1 of the Business
4 and Professions Code or the terms of any franchise, no
5 franchisor shall terminate or refuse to continue any
6 existing franchise unless all of the following conditions are
7 met:

8 (a) The franchisee and the board have received
9 written notice from the franchisor as follows:

10 (1) Sixty days before the effective date thereof setting
11 forth the specific grounds for termination or refusal to
12 continue.

13 (2) Fifteen days before the effective date thereof
14 setting forth the specific grounds with respect to any of
15 the following:

16 (A) Transfer of any ownership or interest in the
17 franchise without the consent of the franchisor, which
18 consent shall not be unreasonably withheld.

19 (B) Misrepresentation by the franchisee in applying
20 for the franchise.

21 (C) Insolvency of the franchisee, or filing of any
22 petition by or against the franchisee under any
23 bankruptcy or receivership law.



(D) Any unfair business practice after written warning thereof.

(E) Failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the motor vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of the motor vehicle dealer or by order of the department.

(3) The written notice shall contain, on the first page thereof, ~~a conspicuous statement which reads as follows:~~ ~~“NOTICE TO DEALER: You may be entitled to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. It is important that you act promptly.”~~ *in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, one of the following statements, whichever is applicable:*

[To be inserted when a 60-day notice of termination pursuant to paragraph (1) is given.]

“NOTICE TO DEALER: You may be entitled to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or you will waive your protest right.”

[To be inserted when a 15-day notice of termination pursuant to paragraph (2) is given.]

“NOTICE TO DEALER: You may be entitled to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or you will waive your protest right.”

(b) Except as provided in Section 3050.7, the board finds that there is good cause for termination or refusal to

1 continue, following a hearing called pursuant to Section
2 3066. The franchisee may file a protest with the board
3 within 30 days after receiving a 60-day notice or within 10
4 days after receiving a 15-day notice. When a protest is
5 filed, the board shall advise the franchisor that a timely
6 protest has been filed, that a hearing is required pursuant
7 to Section 3066, and that the franchisor may not terminate
8 or refuse to continue until the board makes its findings.

9 (c) The franchisor has received the written consent of
10 the franchisee, or the appropriate period for filing a
11 protest has elapsed.

12 ~~The~~

13 (d) (1) *The* franchisor shall not modify or replace a
14 franchise with a succeeding franchise if the modification
15 or replacement would substantially affect the franchisee's
16 sales or service obligations or investment, unless the
17 franchisor has first given the board and each affected
18 franchisee *written* notice thereof at least 60 days in
19 advance of the modification or replacement. Within 30
20 days of receipt of the notice, a franchisee may file a
21 protest with the board and the modification or
22 replacement does not become effective until there is a
23 finding by the board that there is good cause for the
24 modification or replacement. If, however, a replacement
25 franchise is the successor franchise to an expiring or
26 expired term franchise, the prior franchise shall continue
27 in effect until resolution of the protest by the board. In the
28 event of multiple protests, hearings shall be consolidated
29 to expedite the disposition of the issue.

30 (2) *The written notice shall contain, on the first page*
31 *thereof in at least 10-point bold type and circumscribed*
32 *by a line to segregate it from the rest of the text, the*
33 *following statement:*

34 *"NOTICE TO DEALER: You may be entitled to file a*
35 *protest with the NEW MOTOR VEHICLE BOARD in*
36 *Sacramento and have a hearing in which you may protest*
37 *the proposed modification or replacement of your*
38 *franchise under provisions of the California Vehicle*
39 *Code. You must file your protest with the board within 30*
40 *calendar days after receiving this notice."*

1 SEC. 2. Section 3062 of the Vehicle Code is amended
2 to read:

3 3062. (a) (1) Except as otherwise provided in
4 subdivision (b), if a franchisor seeks to enter into a
5 franchise establishing an additional motor vehicle
6 dealership within a relevant market area where the same
7 line-make is then represented, or seeks to relocate an
8 existing motor vehicle dealership, the franchisor shall, in
9 writing, first notify the board and each franchisee in that
10 line-make in the relevant market area of the franchisor's
11 intention to establish an additional dealership or to
12 relocate an existing dealership within or into that market
13 area. Within 20 days of receiving that notice or within 20
14 days after the end of any appeal procedure provided by
15 the franchisor, any such franchisee may file with the
16 board a protest to the establishing or relocating of the
17 dealership. If, within this time, a franchisee files with the
18 board a request for additional time to file a protest, the
19 board or its secretary, upon a showing of good cause, may
20 grant an additional 10 days to file the protest. When such
21 a protest is filed, the board shall inform the franchisor that
22 a timely protest has been filed, that a hearing is required
23 pursuant to Section 3066, and that the franchisor shall not
24 establish or relocate the proposed dealership until the
25 board has held a hearing as provided in Section 3066, nor
26 thereafter, if the board has determined that there is good
27 cause for not permitting the dealership. In the event of
28 multiple protests, hearings may be consolidated to
29 expedite the disposition of the issue.

30 For the purposes of this section, the reopening in a
31 relevant market area of a dealership that has not been in
32 operation for one year or more shall be deemed the
33 establishment of an additional motor vehicle dealership.

34 (2) *The written notice shall contain, on the first page*
35 *thereof in at least 10-point bold type and circumscribed*
36 *by a line to segregate it from the rest of the text, the*
37 *following statement:*

38 *"NOTICE TO DEALER: You may be entitled to file a*
39 *protest with the NEW MOTOR VEHICLE BOARD in*
40 *Sacramento and have a hearing in which you may oppose*

1 *this action under provisions of the California Vehicle*
2 *Code. You must file your protest with the board within 20*
3 *days of your receipt of this notice, or within 20 days after*
4 *the end of any appeal procedure that is provided by us to*
5 *you. If within this time you file with the board a request*
6 *for additional time to file a protest, the board or its*
7 *secretary, upon a showing of good cause, may grant you*
8 *an additional 10 days to file the protest.”*

9 (b) Subdivision (a) does not apply to either of the
10 following:

11 (1) The relocation of an existing dealership to any
12 location ~~which~~ *that* is both within the same city as, and is
13 within one mile from, the existing dealership location.

14 (2) The establishment at any location ~~which~~ *that* is
15 both within the same city as, and is within one-quarter
16 mile from, the location of a dealership of the same
17 line-make that has been out of operation for less than 90
18 days.

19 (c) Subdivision (a) does not apply to any display of
20 vehicles at a fair, exposition, or similar exhibit if no actual
21 sales are made at the event and the display does not
22 exceed 30 days. This subdivision shall not be construed to
23 prohibit a new vehicle dealer from establishing a branch
24 office for the purpose of selling vehicles at the fair,
25 exposition, or similar exhibit, even though that the event
26 is sponsored by a financial institution, as defined in
27 Section 31041 of the Financial Code or by a financial
28 institution and a licensed dealer. The establishment of
29 these branch offices, however, shall be in accordance with
30 subdivision (a) where applicable.

31 (d) For the purposes of this section, the reopening of
32 a dealership that has not been in operation for one year
33 or more shall be deemed the establishment of an
34 additional motor vehicle dealership.

35 SEC. 3. No reimbursement is required by this act
36 pursuant to Section 6 of Article XIII B of the California
37 Constitution because the only costs that may be incurred
38 by a local agency or school district will be incurred
39 because this act creates a new crime or infraction,
40 eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section
2 17556 of the Government Code, or changes the definition
3 of a crime within the meaning of Section 6 of Article
4 XIII B of the California Constitution.

5 Notwithstanding Section 17580 of the Government
6 Code, unless otherwise specified, the provisions of this act
7 shall become operative on the same date that the act
8 takes effect pursuant to the California Constitution.

O

